

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-89
)	
Davel Broadcasting Group, Inc.)	
)	
Order to Show Cause Why the)	
License for Station KLZE(FM))	
Owensville, Missouri Should)	
Not be Revoked)	

**ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER**

Adopted: April 4, 1996

Released: April 11, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) a license held by Davel Broadcasting Group, Inc. ("Davel") for Owensville, Missouri; and (b) the results of an investigation into the station's silent status.¹

2. The Commission's records indicate that KLZE(FM) has been off the air since September 20, 1994 as a result of a legal dispute between the licensee and owner of the transmitting antenna tower site.² On November 1, 1994, the Commission granted special temporary authority for the station to remain silent through February 1, 1995, pending resolution of its site problem. The licensee requested extension of this authority in its January 10, 1995 letter to the Commission, but detailed no steps towards resolving the station's problems. Further, we have no indication that the licensee has either taken any action since the filing of its January 10, 1995 request or, in the alternative, resumed operations pursuant to the minimum operating schedule requirements of Section 73.1740(a)(1) of the Commission's Rules. KLZE(FM) has thus been off the air for over eighteen months, and has not demonstrated that causes beyond its control warrant the station's continued silence since the expiration of its special temporary authority in

¹The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See Debrine Communications, Inc., 7 FCC Rcd 2118 (1992).

²Davel's license expires on February 1, 1997.
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1995. Consequently, Davel is in apparent violation of Sections 73.1740(a)(4)³ and 73.1750⁴ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Sections 312(a) (3) and (4) of the Communications Act of 1934, as amended, Davel Broadcasting Group, Inc. IS DIRECTED TO SHOW CAUSE why the license for KLZE(FM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(1) To determine whether Davel Broadcasting Group, Inc. has the capability and intent to expeditiously resume the broadcast operations of KLZE (FM), consistent with the Commission's Rules.

(2) To determine whether Davel Broadcasting Group, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Davel Broadcasting Group, Inc. is qualified to be and remain the licensee of KLZE(FM).

4. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

³Section 73.1740(a)(4) provides that:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁴Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

5. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving its right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁵

6. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for KLZE (FM), Owensville, Missouri, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1750 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau

⁵The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See Radio Northwest Broadcasting Company, 4 FCC Rcd 596 n.3 (1989).